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**EAST BENCH IRRIGATION DISTRICT WATER CONTRACT
EXTENSION ACT**

AUGUST 30 (legislative day, AUGUST 2), 2011.—Ordered to be printed

Filed under authority of the order of the Senate of August 2, 2011

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 997]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 997) to authorize the Secretary of the Interior to extend a water contract between the United States and the East Bench Irrigation District, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 997 is to authorize the Secretary of the Interior to extend a water contract between the United States and the East Bench Irrigation District in Montana.

BACKGROUND AND NEED

The East Bench Unit of the Pick-Sloan Missouri Basin Program is located in southwestern Montana, along the Beaverhead River and was originally authorized in 1944. The unit provides irrigation service to approximately 28,000 acres.

The water supply contract between the East Bench Irrigation District and the Bureau of Reclamation expired on December 31, 2009. Reclamation is not able to extend the contract deadline administratively; therefore Congressional approval is necessary. Extensions were granted during the 108th and 109th Congresses. The Montana Water Court is in the process of adjudicating the water rights to the system, including the water subject to the contract.

National Environmental Policy Act requirements relating to the contract extension have been completed and the only outstanding requirement is for the Montana courts to confirm the contract terms.

LEGISLATIVE HISTORY

Senator Tester introduced S. 997 on May 12, 2011. The Subcommittee on Water and Power of the Committee on Energy and Natural Resources held a hearing on S. 997 on June 23, 2011, and considered the bill at its business meeting on July 14, 2011. The Committee ordered S. 997 favorably reported without amendment at its business meeting on July 14, 2011.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on July 14, 2011, by voice vote of a quorum present, recommends that the Senate pass S. 997.

SECTION-BY-SECTION ANALYSIS

Section 1 includes the short title for the bill.

Section 2 authorizes the Secretary of the Interior to extend the contract for water services for the East Bench Irrigation District, numbered 14-06-600-3593, until the earlier of either the date that is four years after the date on which the contract would have expired if this Act is not enacted, or the date on which a new long-term contract is executed by the parties to the contract.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 997—A bill to authorize the Secretary of the Interior to extend a water contract between the United States and the East Bench Irrigation District

S. 997 would authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to extend the water contract between the United States and the East Bench Irrigation District for four years or until a new long-term contract is executed, whichever is earlier. Based on information from the Bureau of Reclamation, CBO estimates that enacting the bill would have no impact on the federal budget. Enacting S. 997 would not affect revenues or direct spending; therefore, pay-as-you-go procedures do not apply.

The Bureau of Reclamation supplies irrigation water from the Clark Canyon Dam and Reservoir project to the East Bench Irrigation District under an interim contract negotiated in 2006 after the original contract expired. When confirmed by a Montana district court, the 2006 contract will become the long-term contract. Payments to the federal government under the 2006 contract are about \$115,000 annually, including reimbursement for operations and maintenance costs. Enacting S. 997 would not affect those annual payments.

S. 997 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 997.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 997, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 997, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the June 23, 2011, Subcommittee hearing on S. 997 follows:

STATEMENT OF GRAYFORD F. PAYNE, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairman and Members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 997, the East Bench Irrigation District Water Contract Extension Act. The Department supports S. 997.

Reclamation's Clark Canyon Dam and Reservoir are located in southwest Montana and supply irrigation water under contract to the East Bench Irrigation District (EBID). EBID's water service contract with Reclamation was first executed in October 1958 and expired on December 31, 2005. Pursuant to Section 1 of the Act of May 15, 1922 (42 Stat. 541), Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649), and Section 85–7–1957, Montana Code Annotated, execution of a new contract between the United States and any irrigation district requires a Montana 5th District Court decree.

In 2006, EBID filed a petition with the court seeking court confirmation of the execution of their new proposed renewed contract with Reclamation. A hearing was convened on December 14, 2006, in Dillon, MT. One party ap-

peared and filed an objection to the confirmation proceedings. The parties involved in this court confirmation case have filed various petitions and motions with the court. The court issued an order on April 26, 2007, in response to EBID's petition to dismiss the objection, dismissing some of the counterclaims filed by the objectors, but continuing with other counterclaims. No trial date has been set for this case and as a result, no court decree confirming the 2006 contract has been issued.

Additionally, prior year appropriations bills have extended the contracts for terms of up to two years. EBID remains concerned about losing their right to renew their 1958 contract if it is allowed to expire prior to securing a court decree of the renewed 2006 Contract. For this reason they are pursuing extension of the 1958 contract versus relying on a temporary water service contract.

Under current law, the 2006 contract is not binding on the United States until court confirmation is secured. A final decree from the court confirming the 2006 contract has not occurred. Therefore, EBID is seeking authority under S. 997 to extend the 1958 contract. S. 997 would extend the contract for four years (to December 31, 2013) or until a new contract is executed, and still defer to the court to take up the issue again at a time of its choosing. The Department supports this legislation because it would allow water service to the EBID to continue and protects the right for contract renewal while the court confirmation process is given time to be completed.

This concludes my statement. I am pleased to answer any questions the Subcommittee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 997, as ordered reported.

